

REMARKS

The present application is subject to a restriction requirement dated May 13, 2008 between groups designated by the Examiner (a), (b), (c) and (d), directed to the species of Fig. 1, Fig. 2, Fig. 3, and Fig. 4, respectively. Applicant provisionally elects Group (b) claims directed to the species of Fig. 2, claims 1, 2, 4, 6, 9-12, 14, 17, 18, 20, 21, 23, and 24, with traverse.

The restriction requirement is respectfully traversed as being improperly made. The applicant respectfully asserts that the restriction requirement is improper since the Examiner has at least failed to follow the requirements of MPEP §817(A) which requires that the Examiner

- (1) Identify each group with a Roman numeral
- (2) List claims in each group...
- (3) Give short description of total extent of the subject matter claimed in each group, pointing out critical claims of different scope and identifying whether the claims are directed to a combination, subcombination, process, apparatus, or product.
- (4) Classify each group.

The applicant further respectfully asserts that the restriction requirement is improper since the Examiner has at least failed to show that the claimed inventions are either independent or distinct, as required by 35 U.S.C. §121. The Examiner has failed to even allege that the claimed inventions are “unconnected in design, operation, and effect,”¹ as required for establishing that the claimed inventions or species are independent. Furthermore, the Examiner has failed to even allege that all the injunctive criteria listed in MPEP §806.05(j) are satisfied for establishing that the invention are distinct.

The applicant further respectfully submits that even if the species were independent or distinct, the Examiner should require the applicant “to elect a species ... to which [the applicant’s] claim will be restricted if no claim to the genus is found to be allowable,”² since the claims directed to different embodiments can fall within the scope of several generic claims (*e.g.*, independent claims 1, 10, 21, 23, and 24 which all read

¹ MPEP §802.01(I), MPEP §806.04(b), MPEP §806.06

² 37 CFR §1.146

on each of the views of Figs. 1-4, thus conforming to the example cited in MPEP §806.04(d)).

The applicant further respectfully asserts that the restriction requirement is improper since the Examiner has at least failed to “provide reasons and/or examples to support conclusions”³ that (a) “claims to the different species recite the mutually exclusive characteristics of such species,”⁴ and “there is an examination and search burden for these patentability distinct species [since] the species require a different field of search.”⁵ The applicant respectfully submits that at least because the Examiner has failed either to postulate distinct classifications of the claims which would substantiate the finding of distinct inventions, or to provide other substantive reasons for finding the inventions distinct, the restriction requirement should be withdrawn.

The applicant further respectfully submits that the restriction requirement is improper at least because the Examiner has failed to follow the suggested course of action under MPEP §812.01 which requires that the Examiner telephone the attorney of record and permit the attorney of record to make an oral election.

For the above reasons, reconsideration and withdrawal of the restriction requirement is respectfully requested.

Accordingly, in view of the above amendments, applicants believe all of the claims of the present application to be in condition for allowance and respectfully request reconsideration and passage to allowance of the application.

If the Examiner believes that contact with applicant’s attorney would be advantageous toward the disposition of this case, the Examiner is herein requested to call applicant’s representative at the phone number listed below.

The Commissioner is hereby authorized to charge any additional fees associated with this communication or credit any overpayment to deposit Account No. 50-0289.

³ As required by MPEP §803.01(II)

⁴ Office Action of May 13, 2008, page 2

⁵ *Id.* at pages 2-3

In view of the above amendment, applicant believes the pending application is in condition for allowance.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 50-0289, under Order No. 967_030 from which the undersigned is authorized to draw.

Dated: June 11, 2008

Respectfully submitted,

Electronic signature: /Dmitry Andreev/
Dmitry Andreev
Registration No.: 57,428
MARJAMA MULDOON BLASIAK &
SULLIVAN LLP
250 South Clinton Street
Suite 300
Syracuse, New York 13202
(315) 425-9000
Customer No.: 20874